

**Letter of Findings: 03-20120370P**  
**Withholding Tax**  
**For the Tax Period Ending May 31, 2012**

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**ISSUE**

**I. Withholding Tax – Late Payment Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer seeks abatement of the penalty for late payment of employee withholding tax.

**STATEMENT OF FACTS**

Taxpayer is a company doing business in Indiana. For the period ending May 31, 2012, Taxpayer was required to remit Indiana employee withholding taxes on June 20, 2012. However, Taxpayer remitted Indiana employee withholding tax on June 21, 2012, one day after the deadline. The Indiana Department of Revenue ("Department") assessed interest and a ten-percent penalty for the late payment of the employee withholding tax. Taxpayer protested these assessments. The Department conducted the administrative hearing by telephone, and this Letter of Findings results. Further facts will be provided as required.

**I. Withholding Tax – Late Payment Penalty.**

**DISCUSSION**

Taxpayer argues that it is entitled to abatement of the penalty for late payment of employee withholding tax. IC § 6-8.1-10-2.1 states in relevant part:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;

the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10 [percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including an assessment of a penalty – is presumptively valid.

Departmental regulation [45 IAC 15-11-2](#)(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2](#)(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Taxpayer makes batch payments through its bank. Taxpayer can set the date that payments are made. For the payment of the withholding tax for the month ending May 30, 2012, Taxpayer's employee set the pay date as the wrong date. Taxpayer states that a simple clerical error was made. However, this fits the definition of negligence, and thus a negligence penalty is warranted.

Taxpayer states that Taxpayer has not been delinquent with submitting payments in the past. However, Taxpayer has had multiple late tax payments for previous periods. Based on its history of late payments in

conjunction with the circumstances of the current late payment, Taxpayer has not provided sufficient information to justify penalty waiver.

Taxpayer also protests the imposition of interest, however the Department may not waive interest as provided by IC § 6-8.1-10-1(e).

**FINDING**

Taxpayer's protest is denied.

*Posted: 11/28/2012 by Legislative Services Agency*

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